

## SECTION 22. MILITARY LEAVE

### 22-1. Definitions.

- (a) **Military leave:** Paid or unpaid leave granted to an employee who temporarily leaves County employment for military service or training.
- (b) **Maryland organized militia:** The organized militia of the State of Maryland that consists of the Maryland Army National Guard, the Maryland Air National Guard, the Inactive National Guard, and the Maryland Defense Force. Md. Ann. Code art. 65, §5.

### 22-2. Military leave for active duty.

- (a) **Military leave under County law.** Under County Code Section 33-21, a full-time or part-time employee (other than an elected official) who is involuntarily ordered to active duty in the armed forces of the United States or the National Guard during a national emergency or under Presidential authority, except for active duty for training:
  - (1) may use accrued annual leave and compensatory time while on active duty;
  - (2) is entitled to continue life insurance, health insurance, and retirement system credit for the entire leave period; and
  - (3) must receive County salary for the period of active duty plus 10 calendar days after release from active duty, but the County salary paid must be reduced by:
    - (A) periods when the employee uses accrued annual leave, compensatory time, or donated leave; and
    - (B) all pay and allowances received from the military except for separation allowances.
- (b) **Military leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).** Under USERRA, a full-time or part-time employee who volunteers for or is involuntarily ordered to active duty, including active duty training, inactive duty training, initial active duty for training, or absence for an examination to determine fitness for military service, in the armed forces of the United States or a state militia:
  - (1) may use accrued annual leave and compensatory time while on active duty (38 USC §4316(d));

- (2) must be granted LWOP for the remaining period the employee is in the military service (38 USC §4316(b)(1)(A));
  - (3) may continue life insurance or other benefits during military leave to the same extent that these benefits are available to other employees on LWOP (38 USC §4316(b)(1)(B));
  - (4) may continue to receive health insurance for up to 19 months after beginning LWOP, by paying only the employee's share for the first 30 days of military service while on LWOP and by paying 102 percent of the total health insurance cost for the remaining 18 months (38 USC §4317(a)(1) and (2)).
- (c) ***Military leave for a member of the Maryland organized militia under Maryland law.*** Under the Maryland Code, a County employee member of the Maryland organized militia who is ordered to active duty under authority of the Governor is entitled to administrative leave for the actual period of active duty. For purposes of this subsection, "active duty" does not include inactive duty training (Md. Ann. Code art 65, §42).
- (d) ***Effect of more than 90 calendar days of LWOP for military service.*** A department director must not require an employee who is granted more than 90 consecutive calendar days of leave without pay for military service to waive reinstatement rights to the employee's position (38 USC §4316(b)(1)(A) and Md. Ann. Code art 65, §42).

### **22-3. Reinstatement after active duty military service.**

- (a) Under USERRA and Md. Ann. Code §2-703(a), (b), and (c) of the State Personnel and Pensions Article, an employee is entitled to reinstatement after military service, as provided in Section 22-2(b) of these Regulations, if:
- (1) the total of the employee's periods of active duty do not exceed 5 years over the employee's entire County employment (periods of active duty for training or during which the employee was ordered to active duty during war, emergency, or in support of a critical mission are not included in the calculation of the 5-year period) (38 USC §4312(a)(2)); and
  - (2) the employee complies with the time limits shown in the table below;

<b>Time Limit for Reinstatement after Military Service (38 USC §4312(a)(3) and (e))</b>	
<b>Period of military service:</b>	<b>Employee must:</b>
1-30 calendar days	Report on 1 <sup>st</sup> regularly scheduled workday after completion of military service and an 8-hour rest period
31-180 calendar days	Apply for reinstatement no later than 14 calendar days after completion of service
181 calendar days or more	Apply for reinstatement no later than 90 calendar days after completion of service
If employee hospitalized or convalescing from injury received or aggravated during military service	Apply for reinstatement within 2 years after completion of military service

- (3) the employee's position was not a temporary job or a job expected to last for a brief period, but instead was expected to continue for a significant period of time, as determined by the CAO and under USERRA (38 USC §4312(d)(1)(C));
  - (4) the employee gives written or verbal notice to the department prior to leaving for military service, unless the employee was not able to give prior notice because of military necessity (38 USC §4312(a)(1)); and
  - (5) the employee gives documentation to the department of the length and character of the military service on return from military service of 30 days or more (38 USC §4312(f)(1)); and
  - (6) the employee was not discharged under dishonorable conditions (38 USC §4312(f)(1)(C)).
- (b) Under the Maryland Code, a non-temporary County employee member of the Maryland organized militia who resigns from County employment after being ordered to active duty under authority of the Governor is entitled to reemployment without back pay if the employee:
- (1) is still qualified to perform the duties of the employee's position; and

- (2) applies for reemployment within 30 calendar days after being relieved from active duty (Md. Ann. Code art. 65, §32A).

#### **22-4. Employee rights after reinstatement.**

- (a) Under USERRA and Md. Ann. Code §10-101 of the Political Subdivisions Article and §2-705 and 706 of the State Personnel and Pensions Article, an employee is entitled to the following on reinstatement:
  - (1) prompt reinstatement to the same job or the job that the employee would have had or attained if the employee had not left for military service (if the employee is or can become qualified for that job) or, if the period of service exceeds 90 days, another job of the same status and same rate of pay (38 USC §4313(a));
  - (2) accrued seniority, service increments, and proficiency advancements or noncompetitive promotions that the employee would have received if the employee had not left for military service (38 USC §4316(a));
  - (3) protection against dismissal or termination, except for cause (38 USC §4316(c));
  - (4) training or retraining to make the employee able or qualified to do the job if the job requirements have changed during the period of military service (38 USC §4313(a));
  - (5) employment in a position of lesser status and pay, but with full seniority, if the person cannot become qualified to perform the previous job;
  - (6) reasonable efforts to accommodate a temporary or permanent disability that occurred or was aggravated during the military service (38 USC §4313(a));
  - (7) credit toward vesting under the employee's retirement plan for the period of military service (38 USC §4318(a)(2));
  - (8) credited service for retirement if the employee makes up any required employee contributions (38 USC §4313(b)(1) and (2));
  - (9) reinstatement of unused sick and annual leave (38 USC §4316(a));
  - (10) the same increment date that the employee had before the employee's military leave (38 USC §4316(a)); and

- (11) immediate reinstatement of health insurance coverage without a waiting period or exclusion for pre-existing conditions, except for a health condition that is related to the military service (38 USC §4317(b)(1)).
- (b) Under the Md. Ann. Code art. 65, §32A, a County employee member of the Maryland organized militia who is ordered to active duty under authority of the Governor and who either returns from administrative leave or is reemployed is entitled to the following at the conclusion of active duty:
  - (A) the pay, seniority, and performance rating that the employee would have had if the employee had not been ordered to active duty; or
  - (B) if the employee can no longer perform the duties of the employee's former position because of a disability sustained during the active duty, a position with duties that the employee can perform that provides:
    - (i) similar seniority, status, and pay; or
    - (ii) the nearest approximation possible under the circumstances to the seniority, status, and pay of the employee's former position.

#### **22-5. Military leave for training.**

- (a) ***For an employee member of the Maryland organized militia.***
  - (1) Under Md. Ann. Code art. 65, §42, a department director must grant administrative leave as follows to a County employee who is a member of the Maryland organized militia and who must report for inactive duty military training:
    - (A) no more than 15 workdays or 120 hours of administrative leave each calendar year; or
    - (B) a prorated amount of administrative leave but no more than 15 workdays or 168 hours for a uniformed fire/rescue employee for each calendar year.
  - (2) An employee must apply for administrative leave for military training as soon as the employee receives orders for training.

- (3) The CAO may waive the 15-workday limit when 2 annual training periods are scheduled in one calendar year, but an employee must not use more than 30 workdays of administrative leave for training in a 24-month period.

(b) ***For an employee who is not a member of the Maryland organized militia.***

- (1) An employee who must report for inactive duty military training and who is not a member of the Maryland organized militia, is not entitled to use administrative leave but is entitled to the following under USERRA:
- (A) an approved leave of absence (38 USC §4316(b)(1)(A)); and
  - (B) the use of LWOP or accrued annual leave and compensatory time (38 USC §4316(d)).
- (2) An employee must apply for the appropriate type of leave for military training as soon as the employee receives orders for training.

**22-6. Appeal of military leave decision.** An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on military leave may file a grievance under Section 34 of these Regulations.

**Editor's note** – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

<b>Bargaining unit</b>	<b>Articles of current agreements with references to military leave</b>
Firefighter/Rescuer	9, Administrative Leave 12, Leave Without Pay
OPT/SLT	6, Service Increments 16, Leave Without Pay 19, Administrative Leave
Police	20, Leave Without Pay 28, Service Increments 44, Promotions